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November 17, 2011

Our Ref: 234-10/MEU/DJF

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**VIA FACSIMILE: 212-805-7949**  
 Honorable P. Kevin Castel  
 United States District Judge  
 Southern District of New York  
 United States Courthouse  
 500 Pearl Street  
 New York, NY 10007-1312

RE: **JAMES ABRAHAM, et al. v. RICHARD AQUILONE, JR.**  
**11-cv-5947 (PKC)**  
**In The Matter of the Complaint of NYWT SHARK LLC et al**  
**11-CV-00370 (SAS)**

Dear Judge Castel:

We are counsel for NYWT Shark LLC and NYWT Circle Line d/b/a Circle Line Downtown, owners and operators of the motor vessel SHARK, who were recently served with a Third-Party Complaint filed by Defendant Richard Aquilone, Jr. We take this opportunity to advise Your Honor of our previous filing, pursuant to 46 U.S.C. §30505, and Judge Shira Scheindlin's prior order dated April 13, 2011 attached hereto as Enclosure "A". We further request permission to attend the preliminary conference scheduled in this matter for November 28, 2011, on a without prejudice basis. We have accepted Defendant Aquilone's request to waive formal service pursuant to Rule 4, but a response is not due until January 4, 2011.

Judge Scheindlin's order clearly provides that Plaintiffs herein were barred and precluded from filing any claims in any proceeding against the SHARK interests. Despite this, Defendant Aquilone filed a Third-Party Complaint demanding that the SHARK interests directly answer

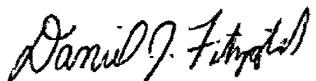
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MEMO ENDORSED  
 November 17, 2011  
 Counsel for Aquilone  
 defendant & plaintiff  
 shall respond by November 22,  
 2011, 5 P.M.  
 Counsel for NYWT  
 2011, 5 P.M.  
 NYWT  
 Shark LLC and NYWT  
 Circle Line are  
 welcome to attend the  
 November 28 conference  
 consistent with their  
 position asserted in  
 the letter of November 17,  
 2011.  
 ORDERED  
 S. J. Castel  
 JSJ  
 11-18-11

the Complaint of Plaintiffs. Under the circumstances presented, Mr. Aquilone's attempt to place the SHARK interests in a position when they could be held directly liable to plaintiffs is clearly improper. Defendant Aquilone further incorrectly asserts a cause of action for contribution which has not accrued as Mr. Aquilone has not paid, or had any judgment entered against him, for more than his share of damages. At this point, the SHARK interests seek to clarify whether it is necessary to reopen the action previously filed before Judge Scheindlin, (11 CV-00370), in order to preserve all of the benefits, rights and elections of the prior filing.

Due to these circumstances, we request permission to attend the pre-trial conference on a without prejudice basis and thank the Court in advance for considering the foregoing.

Respectfully submitted,  
FREEHILL HOGAN & MAHAR, LLP



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Daniel J. Fitzgerald

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Honorable Shira A. Scheindlin  
United States District Judge  
Southern District of New York  
United States Courthouse  
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New York, NY 10007